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Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

SHAWN MICHAEL SKROPITS,
Petitioner,

v.

STATE OF OHIO,
Respondent.

On Petition for Writ of Certiorari to the Ohio Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a law enforcement officer violates the Fourth Amendment of the United States Constitution when he or she intentionally leaves their jurisdictional boundaries for a misdemeanor offense he or she did not witness in violation of state statute, and subsequently makes a traffic stop and arrest outside of their jurisdictional limits.

PARTIES TO THE PROCEEDING

Petitioner:
Shawn Skropits

Respondent:
The State of Ohio

CORPORATE DISCLOSURE

There is no parent or publicly held company owning 10% or more of the corporation's stock named as a party in this matter.

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OPINIONS BELOW

The decision of the Ohio Supreme Court is reported at 882 N.E.2d 444, 117 Ohio St.3d and is reproduced in the Appendix herein at 1a. The decision of the Fifth District Court of Appeals is not officially reported but is available at 2007 WL 3171209 and is reproduced in the Appendix at 17a.

STATEMENT OF JURISDICTION

The Ohio Supreme Court entered judgment against the Petitioner in this matter on February 4, 2009. This Court's jurisdiction is invoked under 28 U.S.C. 1257(a). The Ohio Supreme Court's decision is in direct conflict with the Massachusetts Supreme Court's decision in Commonwealth v. LeBlanc, 551 N.E.2d 906, 407 Mass 70 (1990).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or

under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Statutes

Ohio Revised Code §2935.03, see Appendix C.
Ohio Revised Code §4549.02, see Appendix C.

STATEMENT OF CASE

Petitioner filed a Motion to Dismiss and/or Suppress with the Trial Court alleging that the police officer violated his rights under the Fourth and Fourteenth Amendment of the United States Constitution. After a hearing on January 30, 2007, the Trial Court denied the Petitioner's motion. Upon the Court's denial of his motion, Petitioner entered a plea of no contest and appealed the Trial Court's decision to the Ohio Fifth District Court of Appeals.

The Appellate Court reversed the finding of the Trial Court, finding that the police officer did violate the Petitioner's constitutional rights. The State of Ohio appealed to the Ohio Supreme Court who accepted jurisdiction to hear the matter. After review, the Ohio Supreme Court reversed the finding of the Fifth District Court of Appeals finding that the Petitioner's Fourth Amendment right was not violated. Petitioner now brings this matter before this Court.

On September 27, 2006, an East Canton Police Officer responded to a call regarding an automobile accident. (Supp. T. At 9). The witness at the scene explained that a red Ford Ranger pick-up truck had struck the rear of a full size van. (Supp.T. at 10). The driver of the van had approached the pick-up, exchanged words with the driver, and then drove off. (Supp.T. at 10). After the van left, the pick-up truck also drove away. (Supp. T. at 10). Upon arrival at the scene, the officer found some debris which appeared to be from a Ford Ranger. (Supp. T. At 11). Approximately ten minutes later, after the officer had left the scene and had returned to the Town Hall where he was also bailiffing, the officer received a

dispatch advising that a red Ford Ranger with a smashed front and headlights out was "hiding" in the area of the Old Coyote Restaurant which is located to the west approximately one-half mile outside of East Canton. (Supp. T. At 12).

The officer proceeded to the Old Coyote Restaurant, which is located in Osnaburg Township, however the vehicle was no longer in the area. (Supp. T. At 12-13, 20, 26-27). He found no evidence that the Ford Ranger had been there. (Supp. T. At 30-31). The officer checked a nearby trailer park without success. (Supp. T. At 28). The officer continued to drive west, further away from East Canton, in search of this vehicle. (Supp. T. At 13). The officer had received no new information that would indicate that the suspect vehicle would be found in this direction. (Supp.T. at 37).

The officer then made another stop, this time to check a car wash parking lot in Canton Township, when another motorist pulled up to him and complained of a westbound driver with no headlights who had nearly struck his vehicle. (Supp.T. at 14-15, 20). The officer drove back east until he encountered a Ford Ranger pick-up truck. (Supp.T. at 15). The officer then turned around and initiated a traffic stop. (Supp.T. at 15). The front end of the truck was damaged and the headlights were not on. (Supp.T. at 16). Adam Jones was driving the vehicle and the Petitioner, Shawn Skropits, was the only passenger. (Supp. T. At 17-18). Almost immediately following the officers approach, both individuals indicated that there were guns inside the vehicle. The Petitioner and the driver were subsequently arrested and charged.

The officer acknowledged at the suppression hearing that he was not in "hot pursuit" of any vehicle during this investigation. (Supp. T. At 25, 32). He also stated that he never tried to contact another department for assistance before he initiated the traffic stop. (Supp. T. At 29-30). Additionally, he had no reason to believe any felony had been committed. (Supp. T. At 36). The officer first stated that he was investigating a "hit skip accident." (Supp. T. At 20). Later he stated that he suspected the Petitioner of littering by leaving part of the vehicle in the roadway. (Supp.T. at 41). Finally, the officer admitted that, according to the only witness to the accident, the drivers of the two vehicles spoke briefly and the van left the scene first. (Supp.T. at 41). His continuing pursuit was based upon a hunch. (Supp.T. at 35).

ARGUMENT

Petitioner respectfully requests that this Honorable Court grant a Writ of Certiorari in this matter as the matter involves a substantial question of constitutional law regarding the authority of law enforcement officers and the limitations placed on their powers to restrict their jurisdictional boundaries. Courts are divided on whether a violation of the Fourth Amendment occurs and suppression warranted when an officer is outside their jurisdictional limits. Specifically, the decision of the Ohio Supreme Court in this matter is in direct conflict with the Massachusetts Supreme Court's decision in Commonwealth v. LeBlanc, 551 N.E.2d 906, 407 Mass 70 (1990) that determined that an officer's arrest outside of his jurisdiction and in direct violation of his statutory duties was a violation of the Fourth Amendment and all evidence must be suppressed. Compare People v.

Hamilton, 666 P.2d 152, 157 (Colo.1983) (extra-territorial arrest based on probable cause is reasonable) with United States v. Foster, 566 F. Supp. 1403, 1412 (D.D.C.1983) (when officer acts beyond jurisdiction the resulting deprivation of liberty is just as unreasonable as an arrest without probable cause) and Commonwealth of Pa. v. Fiume, 436 A.2d 1001, 1008, 292 Pa.Super. 54 (1981) (evidence obtained from extraterritorial arrest must be suppressed).

A law enforcement officer may detain an individual only upon an objectively reasonable suspicion that criminal activity has been or is in the process of being undertaken by an individual. Terry v. Ohio, 932 U.S. 1 (1968); Delaware v. Prouse, 440 U.S. 648 (1979). The focus is on whether the police officer has an "articulable and reasonable suspicion" that the individual was violating the law at the time the individual was observed. Berkemer v. McCarthy, 468 U.S. 420 (1984); State v. Fanning, 70 Ohio App.3d 648 (1990). Evidence obtained as a result of an illegal search must be excluded as fruits of such illegality. Mapp v. Ohio, 367 U.S. 463 (1961).

This Court has held that a passenger, as well as a driver, has standing to challenge the lawfulness of a traffic stop. Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400 (2007). Whether a particular search is unconstitutional depends on the specific facts of each case. State v. Robinson, 58 Ohio St.2d 278 (1979). "Only searches that are unreasonable in a constitutional sense mandate the suppression of evidence" pursuant to the exclusionary rule announced in Mapp. Kettering v. Hollen, 64 Ohio St.2d 232 (1980).

In general, an extraterritorial arrest by a municipal police officer for an alleged misdemeanor is not authorized under Ohio law. Kettering, supra at 233. The Ohio Legislature has enacted legislation to address territorial and jurisdictional issues related to police activity. R.C. 2935.03. Under this statute, an officer is only allowed to make an exterritorial arrest when it is done in "hot pursuit", the pursuit is initiated within the officer's jurisdiction, is immediately adjacent to the officers jurisdiction or the offense if a felony or misdemeanor of the first degree. Id.

The Officer in the present case had no reasonable suspicion to believe criminal activity was taking place outside of this jurisdiction. The propriety f an investigative stop must be viewed in light of the totality of the circumstances. State v. Bobo, 37 Ohio St.3d 117 (1988). Reasonable suspicion necessary to justify an investigatory stop requires that the officers must be able to point to "specific and articulable facts" warranting a rational belief that criminal behavior is imminent. Terry, supra at 21. A court cannot condone "intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." Id. at 22.

In the present case, the Petitioner was stopped, questioned and searched in Canton Township. The East Canton Police were responding to a call concerning an accident "downtown" East Canton. Some ten (10) minutes later, the officer responded to a call that a vehicle matching the description of the vehicle of the Petitioner was parked in a parking lot in Osnaburg Township, just outside the municipal limits of East Canton, Ohio. The officer found no evidence of the vehicle in the lot after having searched the

premises and a nearby trailer park for this vehicle. No debris was found, not even tire marks in the gravel, indicating what direction the alleged vehicle had gone.

Without further incident or contact with any other witnesses, parties or evidence, the officer proceeded even further west into a third jurisdiction, Canton Township. There is no evidence in the record that the officer ever saw the suspect vehicle or had formulated a reasonable belief or suspicion that criminal activity was underway in Canton Township. Nevertheless, the officer continued west, almost two (2) miles from the science of the accident and two jurisdictions away when he was allegedly flagged down by an unknown motorist and told that a vehicle matching the Petitioners' had almost struck him.

When the officer initially responded to the call within his own jurisdiction, he believed that a traffic accident had occurred. Upon arrival, however, he learned that the parties had complied with the applicable law and exchanged information as required by R.C. 4549.02. The only other criminal act that the officer alleged he was investigating was littering. The officer then responded to a suspicious vehicle call outside of his jurisdiction and proceeded into yet a third jurisdiction. There is no reasonable explanation for the officers activity in traveling outside of his jurisdiction and into two others.

The officer in this matter did not witness any criminal activity in his jurisdiction. He did not witness any individual leaving the scene of an accident in his jurisdiction. He did not witness any evasive or questionable behavior by any individual in his jurisdiction. Further, he was not investigating any

felony matter. An officer must be able to articulate facts that justify their intrusion. Otherwise, the evidence subsequently seized must be suppressed. State v. Biehl, 9th Dist. C. A. No. 22054, 2004 Ohio 6532. At the point the officer crossed the limits of the jurisdiction and found no one in the parking lot in Osnaburg, he did nothing more than engage in a wild goose chase and followed a hunch unsupported by any reasonable articulable suspicion.

There were no circumstances at the point of the Officer's movement outside of his jurisdiction that can be reasonable articulated to justify his movement into Canton Township. Essentially, he had no right to be in that jurisdiction at the time of the traffic stop of the Petitioner. "An essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed". Horton v. California 496 U.S. 128, 135, 110 S.Ct. 2301 (1990). Not only must the officer be lawfully located in the place, "but he or she must also have a lawful right of access to the object itself." Id. The officer in this matter was not lawfully in the place upon which he came into contact with the Petitioner.

In pursuing this vehicle so far from his jurisdiction when the officer did not reasonably believe that any criminal activity had been or was in the process of being committed, the officer acted unreasonably and in violation of the Fourth and Fourteenth Amendments of the United States Constitution. "... [W]e are sensitive to the abuses that could follow an intentional or premeditated disregard of territorial limits. See People v. Wolf, 635 P.2d 213, 217 (Colo.1981). "Law

enforcement officers should not make excursions into other jurisdictions to ferret out crime...." Id. The officer in this matter did just that. The decision of the Ohio Supreme Court directly conflicts with those Courts that determined that the violation of an officer's jurisdictional boundaries alone can be a Fourth Amendment violation.

This Court should grant Petitioner's Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

Supreme Court of Ohio

Nos. 2007-2310, 2007-2311

[Filed February 4, 2009]

THE STATE OF OHIO, APPELLANT,	)
V.	)
JONES, APPELLEE.	)
THE STATE OF OHIO, APPELLANT,	)
V.	)
SKROPITS, APPELLEE.	)

Criminal law — Extraterritorial traffic stop — A law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution.

(Nos. 2007-2310, 2007-2311 — Submitted October 14, 2008 — Decided February 4, 2009.)

APPEAL from the Court of Appeals for Stark County, No. 2007-CA-00139, 2007-Ohio-5818.

APPEAL from the Court of Appeals for Stark County, No. 2007-CA-00098, 2007-Ohio-5817.

SYLLABUS OF THE COURT

A law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution. (*State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997, followed.)

O'CONNOR, J.

{¶ 1} Today we determine whether an officer's extraterritorial traffic stop in contravention of R.C. 2935.03 also violates the Fourth Amendment of the United States Constitution, when the officer has probable cause to initiate the stop because he personally observed a traffic violation. For the reasons that follow, we hold that it does not.

Relevant Background

{¶ 2} On the night of September 27, 2006, Sergeant Mitchell Hershberger of the East Canton Police Department responded to an accident at 113 East

Nassau Street in East Canton. A witness told Sergeant Hershberger that a red Ford Ranger had collided with a full-size van. The drivers had exchanged words and afterwards left the scene, with the Ford heading west on Nassau Street.

{¶ 3} Sergeant Hershberger noticed some debris left behind from the Ford. Approximately ten minutes later, he received another dispatch advising him that the Ford was hiding in the area of the former Coyote Restaurant, located about a half mile from East Canton. Hershberger went to the restaurant but did not find the Ford. Believing that the vehicle could be headed towards Canton, Sergeant Hershberger next drove out to Trump Road, about another half mile away.

{¶ 4} When Sergeant Hershberger arrived at Trump Road, he began heading back east, checking various businesses for the Ford. While he was checking a car wash, a motorist told Sergeant Hershberger that a vehicle heading west without any headlights almost hit him.

{¶ 5} Sergeant Hershberger got back on the road, continuing to go east towards East Canton, and eventually saw the Ford. Upon finding the truck, he observed that its front end was smashed and its headlights were not on. Sergeant Hershberger stopped the Ford, which appellee Adam Jones was driving, because the vehicle did not have its headlights on.

{¶ 6} After he had pulled over the vehicle, Sergeant Hershberger asked Jones and his passenger, appellee Shawn Skropits, whether they had any weapons in the truck, and appellees said that they did. In addition,

Jones told Sergeant Hershberger that he did not have a driver's license, which was why he had left the accident scene.

{¶ 7} Sergeant Hershberger arrested appellees and charged each of them with one count of carrying a concealed weapon and one count of unlawful possession of dangerous ordnance. Appellees moved to suppress the evidence obtained during the search, arguing that because the stop violated R.C. 2935.03, which governs the territorial jurisdiction in which a police officer may make an arrest, it also violated the Fourth Amendment. After a hearing on the motion, the trial court denied appellees' requests.

{¶ 8} Following the denial of their motions to suppress, appellees pleaded no contest to the charges, were found guilty by the trial court, and were sentenced to community control.

{¶ 9} Appellees appealed the trial court's judgment to the Fifth District Court of Appeals. The court of appeals reversed in a divided opinion, holding that there was neither reasonable suspicion nor probable cause to support Sergeant Hershberger's stop. The dissent, however, would have affirmed the trial court's denial of the motion to suppress based on *State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997.

{¶ 10} The state appealed the reversals, and we exercised jurisdiction and consolidated the cases. *State v. Skropits*, 117 Ohio St.3d 1450, 2008-Ohio-1427, 883 N.E.2d 1075 (cause consolidated); *State v. Jones*, 117 Ohio St.3d 1438, 2008-Ohio-1279, 883 N.E.2d 456 (appeal accepted and cause consolidated); *State v.*

Skropits, 117 Ohio St.3d 1423, 2008-Ohio-969, 882 N.E.2d 444 (appeal accepted).

Analysis

{¶ 11} Our decision in *Weideman* and the United States Supreme Court's recent decision in *Virginia v. Moore* (2008), ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559, are dispositive of this matter. Read together, *Weideman* and *Moore* stand for the principle that a law-enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559; *Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997, syllabus.

{¶ 12} We held in *Weideman* that "[w]here a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment." 94 Ohio St.3d 501, 764 N.E.2d 997, syllabus.

{¶ 13} The facts of *Weideman* closely mirror those of the present case. In *Weideman*, a police officer outside of his jurisdiction stopped a vehicle that he had observed traveling left of center. Id. at 502, 764 N.E.2d 997. The trial court denied Weideman's motion to suppress, but the court of appeals reversed, reasoning that because the officer had been outside of his jurisdiction, the arrest was unlawful under R.C.

2935.03(A)(1) and per se unreasonable under the Fourth Amendment. Id. at 503, 764 N.E.2d 997.

{¶ 14} We reversed the appellate court's judgment. Specifically, we held that "[t]he state's interest in protecting the public from a person who drives an automobile in a manner that endangers other drivers outweighs [the defendant's] right to drive unhindered." Weideman, 94 Ohio St.3d at 506, 764 N.E.2d 997. But because the stop was not per se unreasonable, it follows that a court could find that an extraterritorial stop is unreasonable based on the unique facts and circumstances of a particular case.[1]

{¶ 15} The United States Supreme Court's decision in *Moore*, however, removed any room for finding that a violation of a state statute, such as R.C. 2935.03, in and of itself, could give rise to a Fourth Amendment violation and result in the suppression of evidence.[2] Officers stopped and arrested Moore for driving on a suspended license. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559. Under Virginia law, the officers should have issued Moore a summons rather than arresting him because driving on a suspended license was generally not an arrestable offense. Id. at ___, 128 S.Ct. at 1602, 170 L.Ed.2d 559. Following Moore's arrest, the officers found 16 grams of crack cocaine and

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[1] In this respect, Justice Cook's concurring opinion was prescient in noting that the *Weideman* majority's Fourth Amendment balancing analysis was unnecessary when the stop is based upon probable cause. 94 Ohio St.3d at 507, 764 N.E.2d 997.

[2] We note that the Fifth District issued its opinions in the cases before us prior to the release of the Supreme Court's decision in *Moore*.

$516 on his person. Id. at ___, 128 S.Ct. at 1601, 170 L.Ed.2d 559.

{¶ 16} Moore moved to suppress the evidence on Fourth Amendment grounds. Id. at ___, 128 S.Ct. at 1602, 170 L.Ed.2d 559. The trial court denied the motion, but the Supreme Court of Virginia ultimately reversed the ruling. Id. The United States Supreme Court then reversed that judgment, reinstating the trial court's denial of the motion to suppress. Id. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559

{¶ 17} *Moore* explained that "when an officer has probable cause to believe a person committed *even a minor crime* in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." (Emphasis added.) Id. at ___ U.S. ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559. The court further acknowledged that although states could legislate a higher standard on searches and seizures, those laws do not alter the requirements of the Fourth Amendment. Id.

{¶ 18} Applying Virginia's law to the facts of the case, the Supreme Court observed that although the statute provided a greater degree of protection than that afforded under the Fourth Amendment, it did not provide a remedy of suppression for a violation. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1606, 170 L.Ed.2d 559. Thus, because of the need for consistency and bright-line standards when applying the Fourth Amendment, the court concluded that "it is not the province of the Fourth Amendment to enforce state law." Id. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559.

{¶ 19} In the case before us, it is undisputed that there was a violation of R.C. 2935.03(A)(1). However, the majority of the appellate court did not sufficiently appreciate the importance of the fact that Sergeant Hershberger personally observed Jones driving without headlights in the dark in clear contravention of several Ohio statutes.[3] This conduct constituted a traffic violation, thereby giving Sergeant Hershberger probable cause to initiate the stop because he had personally observed the violation. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 11-12, 665 N.E.2d 1091 ("where an officer has * * * probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid").[4]

{¶ 20} The appellate court's focus on the fact that Sergeant Hershberger was outside his jurisdiction and on his reasons for being there is irrelevant to the Fourth Amendment analysis. The sole focus of the

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[3] See, e.g., R.C. 4513.03 (lights required between sunset and sunrise, during unfavorable weather conditions, or any other time when there is insufficient light, 4513.04 (every motor vehicle required to be equipped with two operable headlights, 4513.14 (headlights must be on during the times set forth in 4513.03), and 4513.15 (headlights required sufficient to reveal persons, vehicles, or substantial objects at a safe distance).

[4] Our holding today does not modify well-settled law that reasonable suspicion is sufficient to justify an investigatory stop. See *U.S. v. Lopez Soto* (C.A.9, 2000), 205 F.3d 1101, 1104. We discuss probable cause only to highlight the fact that an extraterritorial stop for a traffic violation based on probable cause is reasonable. *Whren v. United States* (1996), 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89. Similarly, when the extraterritorial stop is based on reasonable suspicion rather than probable cause, *Weideman* still controls.

inquiry should have been on the stop itself because the violation of R.C. 2935.03 does not rise to the level of a constitutional violation for the reasons expressed in *Moore*. See also *Rose v. Mulberry, Arkansas* (C.A.8, 2008), 533 F.3d 678, 679-680 ("the determinative issue is whether an arrest by a city police officer outside of his jurisdiction but made with probable cause violates the Fourth Amendment as a matter of law. * * * [The officer] lacked the authority under Arkansas law to make traffic stops and arrests on the Interstate. Nevertheless, because he had probable cause to arrest for the offense * * * no Fourth Amendment violation occurred").

{¶ 21} Although it could have done so,[5] the General Assembly chose not to provide any remedy for a violation of R.C. 2935.03(A)(1). Thus, pursuant to *Moore*, we are not in the position to rectify this possible legislative oversight by elevating a violation of R.C. 2935.03 to a Fourth Amendment violation and imposing the exclusionary rule, because the stop in this case was constitutionally sound. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559.

{¶ 22} Likewise, we must reject appellees' entreaties that we develop a balancing test for determining when to impose a suitable sanction for a

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[5] For example, the General Assembly passed the speedy-trial statutes, R.C. 2945.71 et seq., to protect a defendant's Sixth Amendment right to a speedy trial. *State ex rel. Micheel v. Vamos* (1945), 144 Ohio St. 628, 631, 30 O.O. 225, 60 N.E.2d 305. However, to guarantee that the right to a speedy trial is fully effectuated, the General Assembly also enacted R.C. 2945.73, which explicitly provides for dismissal of a case when the speedy-trial laws are violated.

law-enforcement officer's violation of the territorial limits on arrest powers. Generally, establishing a remedy for a violation of a statute remains in the province of the General Assembly, not the Ohio Supreme Court. *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188, ¶ 37. The Fourth Amendment simply does not require this result. *Moore*, ___ U.S. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559.

Conclusion

{¶ 23} We share the concerns that appellees express about law-enforcement officers who violate the territorial requirements of R.C. 2935.03. However, as discussed above, the remedy for a violation of the statute falls within the realm of the legislative branch. The Fourth Amendment does not provide the remedy that appellees seek in this case.

{¶ 24} Accordingly, we reverse the judgment of the court of appeals and reinstate the trial court's judgment.

Judgment reversed.

MOYER, C.J., and LUNDBERG STRATTON, LANZINGER, and CUPP, JJ., CONCUR.

PFEIFER and O'DONNELL, JJ., concur separately.

O'DONNELL, J., concurring.

{¶ 25} The sole issue before the court is whether the exclusionary rule should be applied to suppress

evidence obtained as a result of a police officer's extraterritorial traffic stop. The majority reverses the judgment of the Fifth District Court of Appeals and holds that the trial court properly denied Jones's and Skropits's motions to suppress the evidence. I concur with that result based on the following three-part analysis.

(1) ***Whether an officer's extraterritorial stop in violation of R.C. 2935.03 requires exclusion of evidence.***

{¶ 26} As the court of appeals stated in its decision, "Revised Code § 2935.03(A)(1) governs a police officer's jurisdiction to arrest. It is undisputed in this case that the arresting officer was outside of his territorial jurisdiction when he made the arrest as the subject vehicle was located outside of the East Canton border." *State v. Jones*, Stark App. No. 2007-CA-00139, 2007-Ohio-5818, 2007 WL 3171206, ¶ 16. Thus, it may be assumed that the officer violated R.C. 2935.03, and the question becomes whether the exclusionary rule applies.

{¶ 27} In *Kettering v. Hollen* (1980), 64 Ohio St.2d 232, 18 O.O.3d 435, 416 N.E.2d 598, this court unanimously answered the question in the negative. There, the court assumed that a Kettering police officer violated R.C. 2935.03 by stopping a car in the city of Dayton for erratic driving. Id. at 234, 18 O.O.3d 435, 416 N.E.2d 598. The issue was whether the statutory violation required application of the exclusionary rule. Id. Citing numerous cases in support, this court explained:

{¶ 28} "It is clear * * * that the exclusionary rule will not ordinarily be applied to evidence which is the product of police conduct violative of state law but not violative of constitutional rights.

{¶ 29} "We turn now to examine the facts in this case to determine whether a constitutional violation occurred. We find none. At the outset, it is readily apparent that [the officer] had probable cause to arrest the defendant after observing his erratic driving behavior." Id. at 234-235, 18 O.O.3d 435, 416 N.E.2d 598.

{¶ 30} Thus, a violation of R.C. 2935.03 does not justify exclusion unless the violation also rises to a constitutional violation.

(2) ***Whether an extraterritorial stop in violation of R.C. 2935.03 is a per se violation of the Fourth Amendment, thus requiring exclusion of evidence.***

{¶ 31} In *State v. Weideman* (2002), 94 Ohio St.3d 501, 764 N.E.2d 997, a Ravenna police officer left his territory to conduct a routine errand, and while outside of the city limits, he observed a driver traveling left of center. Id. at 502, 764 N.E.2d 997. In violation of R.C. 2935.03, the officer stopped the vehicle, conducted a sobriety test, and detained the driver for drunk driving until a state trooper arrived to make the arrest. Id. at 502-503, 764 N.E.2d 997. This court eventually accepted review of the following conflict question certified by the Eleventh District Court of Appeals: " 'Whether a stop and detention of a motorist by a police officer, who is *beyond* his or her jurisdictional limits, for an offense observed and

committed *outside* the officer's jurisdiction automatically constitutes a *per se* unreasonable seizure under the Fourth Amendment, thereby triggering the mandatory application of the exclusionary rule to suppress all evidence flowing from the stop.' " (Emphasis sic.) Id. at 504, 764 N.E.2d 997.

{¶ 32} This court answered in the negative: "Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop." 94 Ohio St.3d at 506, 764 N.E.2d 997. Rather, the only issue is whether the officer had probable cause, and "[t]he trial court did not err when it concluded that defendant's manner of operating her motor vehicle gave [the officer] sufficient probable cause to make the stop." Id.

{¶ 33} Our conclusion in *Weideman* is consistent with the United States Supreme Court's recent decision in *Virginia v. Moore* (2008), ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559. There, a police officer stopped and arrested Moore on the belief that he was driving on a suspended license, but Virginia law provided that an officer could not arrest a driver for this offense. Id. at ___, 128 S.Ct. at 1602, 170 L.Ed.2d 559. The issue on appeal to the Supreme Court was whether the officer's violation of the state statute necessarily resulted in a violation of the Fourth Amendment. The court held that it did not: "[W]hen an officer has probable cause to believe a person committed even a minor crime in his presence, the

balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." Id. at ___, 128 S.Ct. at 1604, 170 L.Ed.2d 559.

{¶ 34} Thus, in this case, the officer's extraterritorial stop and arrest of Jones and Skropits in violation R.C. 2935.03 is not a per se violation of the Fourth Amendment requiring application of the exclusionary rule. The Fourth Amendment requires exclusion only when the officer lacked probable cause to make the stop; the fact that the stop was extraterritorial is irrelevant.

(3) *Whether the officer had probable cause to stop Jones and Skropits.*

{¶ 35} Here, the police officer testified at the suppression hearing that he had personally observed that the headlights on Jones and Skropits's truck were nonfunctional, in violation of several sections in R.C. Chapter 4513. When an officer personally observes a traffic violation, the officer has probable cause to initiate a traffic stop. *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698.

{¶ 36} It could be argued that the broken headlights were mere pretext and that the real reason for stopping Jones and Skropits was the officer's subjective belief that they were involved in a "hit-skip" accident in East Canton, a violation that the officer did not observe. The United States Supreme Court, however, has consistently rejected subjective analyses and other claims of pretext in the context of probable cause. See *Whren v. United States* (1996), 517 U.S. 806, 813-814, 116 S.Ct. 1769, 135 L.Ed.2d 89, quoting *United States v. Robinson* (1973), 414 U.S. 218, 221, 94

S.Ct. 467, 38 L.Ed.2d 427, fn. 1 ("we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers * * *. [A] traffic-violation arrest * * * [will] not be rendered invalid by the fact that it was 'a mere pretext for a narcotics search' "); see also *Arkansas v. Sullivan* (2001), 532 U.S. 769, 772, 121 S.Ct. 1876, 149 L.Ed.2d 994, quoting *Whren*, 517 U.S. at 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (" 'subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis' "); *Bond v. United States* (2000), 529 U.S. 334, 338, 120 S.Ct. 1462, 146 L.Ed.2d 365, fn. 2 ("the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment").

{¶ 37} Accordingly, because the arresting officer personally observed the traffic violation, he had probable cause to stop Jones and Skropits. And because there is no constitutional violation, there is no basis for applying the exclusionary rule.

{¶ 38} I respectfully concur.

PFEIFER, J., concurs in the foregoing opinion.

John D. Ferrero, Stark County Prosecuting Attorney, and Ronald Mark Caldwell, Assistant Prosecuting Attorney, for appellant.

Tammi R. Johnson, Stark County Public Defender, and Steven A. Reisch, Assistant Public Defender, for appellee Adam David Jones.

George Urban, for appellee Shawn Michael Skropits.

Richard Cordray, Attorney General, Benjamin Mizer, Solicitor General, and Todd Nist, Assistant Solicitor, urging reversal for amicus curiae, Attorney General of Ohio.

APPENDIX B

COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, STARK COUNTY

Case No. 2007 CA 00098

[Date of Judgment Entry October 29, 2007]

STATE OF OHIO,
Plaintiff-Appellee

-vs-

SHAWN MICHAEL SKROPITS,
Defendant-Appellant

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 2006 CR 01655(A).

JUDGES: Hon. Sheila G. Farmer, P. J., Hon. John W. Wise, J., Hon. Julie A. Edwards, J. Farmer, P. J., concurs. Edwards, J., dissents.

OPINION

Wise, J.

[¶1] Defendant-appellant Shawn Skropits appeals his sentence and conviction entered in the Stark County Court of Common Pleas on one count of

Carrying a Concealed Weapon, a felony of the fourth degree, and one count of Unlawful Possession of a Dangerous Ordnance, a felony of the fifth degree.

[¶2] Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

On September 27, 2006, an East Canton Police Officer Mitchell Hershberger responded to a call regarding an automobile accident. (Supp. T. at 9). When he arrived at the location of the accident, 113 East Nassau Street in East Canton, neither vehicle was still at the scene. Officer Hershberger talked with a witness who worked at the nearby gas station, and was told that a small red Ford Ranger had struck the rear end of a full-size van. (Supp. T. at 10). The driver of the van got out and exchanged words with the driver of the Ford Ranger. (Supp. T. at 10). The driver of the van then got back into his vehicle, made a U-turn, and left the scene. (Supp. T. at 10). The Ford Ranger also left the scene, proceeding westbound on Nassau Street. (Supp. T. at 10)

[¶3] At the scene the officer found some debris which appeared to be from a Ford Ranger. (Supp. T. at 11). Approximately ten minutes later, after the officer had left the scene and had returned to the Town Hall where he was also bailiffing, the officer received a dispatch advising that a red Ford Ranger with a smashed front and headlights out was "hiding" in the area of the Old Coyote Restaurant, which is located in Osnaburg Township approximately one-half mile from East Canton. (Supp. T. at 12-13). The officer proceeded to the Old Coyote Restaurant, however there was no sign of the vehicle as reported. (Supp. T. at 12-13, 20,

26-27). The officer continued to search for the vehicle, searching a nearby trailer park without success. (Supp. T. at 28). The officer next traveled westbound approximately another one-half mile on West Nassau Street/Lincolnway out to Trump Road to check the businesses located there, and then returned "doing a sweep back towards town." (Supp. T. at 13).

[¶4] The Officer stopped to check a car wash parking lot, in Canton Township, when another motorist pulled up to him and complained of a vehicle traveling westbound, which was driving without headlights, and which had nearly struck his vehicle. (Supp. T. at 14-15, 20). The Officer drove back east until he encountered a Ford Ranger pick-up truck. (Supp. T. at 15). The Officer then turned around and initiated a traffic stop. (Supp. T. at 15). The front end of the truck was damaged and the headlights were not on. (Supp. T. at 16). Adam Jones was driving the vehicle and Shawn Skropits was the only passenger. (Supp. T. at 17-18).

[¶5] Almost immediately following the approach and encounter with the occupants of the vehicle, both individuals indicated that there were guns in the vehicle. Both Shawn Skropits and Adam Jones were subsequently arrested

[¶6] On November 2, 2006, Appellants Shawn Skropits and Adam Jones were each indicted on one count of Carrying a Concealed Weapon, a fourth degree felony, and one count of Unlawful Possession of a Dangerous Ordnance, a fifth degree felony. The indictments also charged that each were either the principal offender or they aided and abetted each other. The men were charged with having four

handguns and a sawed-off shotgun, along with ammunition for the guns, in the vehicle.

[¶7] On January 17, 2007, Appellant Shawn Skropits filed a Motion to Dismiss and/or Suppress.

[¶8] On January 22, 2007, Adam Jones filed his Motion to Dismiss and/or Suppress.

[¶9] On January 30, 2007, the trial court held a Suppression Hearing.

[¶10] At said Suppression hearing, the Officer stated that he was not in "hot pursuit" of any vehicle during this investigation (Supp. T. at 25, 32). He also stated that he did not contact another police department for assistance before he initiated the traffic stop. (Supp. T. at 29-30). The Officer stated that he was investigating a "hit skip accident." (Supp. T. at 20). Later he stated that he suspected the suspect of littering by leaving part of the vehicle in the roadway. (Supp. T. at 41). Finally, the Officer admitted that, according to the only witness to the accident, the drivers of the two vehicles spoke briefly and the van left the scene first. (Supp. T. at 41).

[¶11] By Judgment Entry filed February 2, 2007, the trial court overruled both Motions to Suppress.

[¶12] After the suppression motions were overruled, Appellant Skropits changed his former plea of not guilty to a plea of no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing, the trial court found Appellant Skropits guilty as charged and ordered a probation investigation report. Upon the completion of

this report, the trial court imposed a community control sanction for a period of two years.

[¶13] Appellant Skropits thereafter filed the instant appeal to challenge the court's suppression ruling, assigning the following error for review:

ASSIGNMENT OF ERROR

[¶14] "I. THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S MOTION TO SUPPRESS."

I.

[¶15] In his sole assignment of error, Appellant argues that the police had insufficient reasonable suspicion or probable cause to support their initial stop of the vehicle in which he was a passenger. We agree.

[¶16] Revised Code §2935.03(A)(1) governs a police officer's jurisdiction to arrest. It is undisputed in this case that the arresting officer was outside of his territorial jurisdiction when he made the arrest as the subject vehicle was located outside of the East Canton border. When determining whether an extraterritorial stop triggers the exclusionary rule, a court must determine, under the totality of the circumstances, whether the statutory violation rises to the level of a constitutional violation, i.e., whether the police officer had reasonable suspicion to stop and sufficient probable cause to arrest appellant. *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997, 2002 Ohio 1484.

[¶17] If the totality of the facts and circumstances demonstrate that police had a reasonable, articulable

suspicion of criminal conduct sufficient to warrant the investigative stop and detention, and probable cause to arrest, then while that extraterritorial seizure may violate R.C. §2935.03, it does not rise to the level of a constitutional violation requiring suppression of all evidence derived from the stop. Id.

[¶18] The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *." The amendment has been extended to seizures of passengers in traffic stops under the rationale that the amendment "protects people, not places." *Katz v. United States* (1967), 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576. Using the reasonableness requirement of the amendment, the United States Supreme Court has held that a seizure must be reasonable both at its inception and throughout its duration. See *Terry v. Ohio* (1968), 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889.

[¶19] An investigatory stop is permissible if a law enforcement officer has a reasonable suspicion, based on specific and articulable facts, that the individual to be stopped may be involved in criminal activity. *Terry v. Ohio* (1968), 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L. Ed. 2d 889. When determining whether or not an investigative traffic stop is supported by a reasonable, articulable suspicion of criminal activity, the stop must be viewed in light of the totality of circumstances surrounding the stop. *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph one of the syllabus, cert. denied (1988), 488 U.S. 910, 109 S. Ct. 264, 102 L. Ed. 2d 252.

[¶20] Ohio Courts have held that a passenger as well as the driver of a vehicle has standing to challenge the lawfulness of a traffic stop. *State v. Amburgy* (1997), 122 Ohio App.3d 277, 282-83, 701 N.E.2d 728. The United States Supreme Court recently reached the same conclusion and found that "[a] traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver ... and the police activity that normally amounts to intrusion on the privacy and personal security does not normally (and does not here) distinguish between passenger and driver." *Brendlin v. California* (2007), 127 S.Ct. 2400, 168 L.E.2d 132.

[¶21] Upon review of the facts in the case sub judice, we do not find that the officer had reasonable suspicion, based on specific and articulable facts, that the driver of the vehicle or his passenger may have been involved in criminal activity. The dispatch call received by Officer Hershberger was for a traffic accident. Upon driving to the scene and finding that the vehicles were no longer there, he interviewed a witness who informed him that the two drivers involved in the accident spoke to one another and that both left the scene thereafter. Based on this information, Officer Hershberger had no reason to believe that a crime had occurred. Even after he received the second call about the red Ford Ranger "hiding" near the Coyote Restaurant, which was outside his jurisdiction, he still had no reason to believe that a crime had been committed. He did not drive out of his jurisdiction in "hot pursuit". We further find that the officer did not have jurisdiction to pull over the vehicle in question based on the complaint he received while outside of his jurisdiction,

from another motorist, that a vehicle driving without its headlights on had almost hit him.

[¶22] Accordingly, we find the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice.

[¶23] We therefore find that Officer Hershberger's action in making an extraterritorial stop of the vehicle in the case sub judice violates the reasonableness requirement of the Fourth Amendment. Officer Snow's statutory violation in this case therefore requires suppression of all evidence flowing from the stop.

[¶24] Accordingly, we hereby sustain Appellant's assignment of error.

[¶25] For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and this matter is remanded for further proceedings consistent with the law and this opinion.

By: Wise, J.

Farmer, P. J., concurs.

Edwards, J., dissents.

JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and remanded for further proceedings consistent with this opinion.

Costs assessed to appellee.

DISSENT

EDWARDS, J., DISSENTING OPINION

[¶26] I respectfully dissent from the majority's analysis and disposition of appellant's sole assignment of error.

[¶27] The majority, in the case sub judice, finds that the officer did not have a reasonable suspicion of criminal activity sufficient to justify the extra-territorial stop in the case sub judice. The majority further finds that the officer's action in stopping the vehicle violated the reasonableness requirement of the Fourth Amendment.

[¶28] The Ohio Supreme Court, in the syllabus of *State v. Weideman,* 94 Ohio St.3d 501, 2002 Ohio 1484, 764 N.E.2d 997, held as follows:

[¶29] "Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop."

[¶30] At the suppression hearing in this matter, Officer Hershberger testified that he pulled over the vehicle because it had no headlights on. Supp. T. at 40.

There also was testimony adduced at the hearing that it was dark outside at that time.

[¶31] Based on *Weideman,* supra., I would find that the stop of the vehicle by the officer in this matter was not unreasonable per se under the Fourth Amendment and that the officer's statutory violation does not require suppression of all evidence flowing from the stop. As noted by appellee, the officer personally observing appellant driving in the dark without headlights and therefore had reasonable suspicion to make the traffic stop.

[¶32] Based on the foregoing, I would find that the trial court did not err in denying the Motion to Suppress in this case.

Judge Julie A. Edwards

APPENDIX C

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure
Chapter 2935. Arrest, Citation, and
Disposition Alternatives
Arrest

2935.03 Arrest and detention until warrant can be obtained

(A)(1) A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint township police district, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, veterans' home police officer appointed under section 5907.02 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of

transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended, shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(2) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer's, state fire marshal law enforcement officer's, or individual's territorial jurisdiction, a law of this state.

(3) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (D)(1)(a) of section 101.311 of the

Revised Code or while providing security pursuant to division (D)(1)(f) of section 101.311 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(B)(1) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a protection order as defined in section 2919.27 of the Revised Code, the offense of menacing by stalking as defined in section 2903.211 of the Revised Code, the offense of aggravated trespass as defined in section 2911.211 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a peace officer described in division (A) of this section may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.

(2) For purposes of division (B)(1) of this section, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation:

(a) A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass;

(b) A written statement by the administrator of the interstate compact on mental health appointed under section 5119.51 of the Revised Code alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code;

(c) A written statement by the administrator of any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or

confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code.

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

(i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

(b) If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of this section until a warrant can be obtained.

If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that family or household members have committed the offense against each other, it is the preferred course of action in this state that the officer, pursuant to division (B)(1) of this section, arrest and detain until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action in this state regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but, pursuant to division (B)(1) of this section, the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not

have reasonable cause to believe is the primary physical aggressor.

(c) If a peace officer described in division (A) of this section does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of domestic violence or the offense of violating a protection order when it is the preferred course of action in this state pursuant to division (B)(3)(b) of this section that the officer arrest that person, the officer shall articulate in the written report of the incident required by section 2935.032 of the Revised Code a clear statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained.

(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

(i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;

(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other

person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

(e)(i) A peace officer described in division (A) of this section shall not require, as a prerequisite to arresting or charging a person who has committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense.

(ii) If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order and if the victim of the offense does not cooperate with the involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or the filing of the charges, informs the involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the

incident that resulted in the arrest or filing of the charges and of all witnesses to that incident.

(f) In determining pursuant to divisions (B)(3)(a) to (g) of this section whether to arrest a person pursuant to division (B)(1) of this section, a peace officer described in division (A) of this section shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to the person's arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility.

(g) If a peace officer described in division (A) of this section intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.

(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment

and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable:

(i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded;

(ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

(4) If, in the circumstances described in divisions (B)(3)(a) to (g) of this section, a peace officer described in division (A) of this section arrests and detains a person pursuant to division (B)(1) of this section, or if, pursuant to division (B)(3)(h) of this section, a peace officer described in division (A) of this section seizes a deadly weapon, the officer, to the extent described in and in accordance with section 9.86 or 2744.03 of the Revised Code, is immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention or the seizure.

(C) When there is reasonable ground to believe that a violation of division (A)(1), (2), (3), (4), or (5) of section 4506.15 or a violation of section 4511.19 of the Revised Code has been committed by a person operating a motor vehicle subject to regulation by the public

utilities commission of Ohio under Title XLIX of the Revised Code, a peace officer with authority to enforce that provision of law may stop or detain the person whom the officer has reasonable cause to believe was operating the motor vehicle in violation of the division or section and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A) of this section, township constable, police officer of a township or joint township police district, state university law enforcement officer appointed under section 3345.04 of the Revised Code, peace officer of the department of natural resources, individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code, the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, or an assistant house sergeant at arms is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a

regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

(2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(E) In addition to the authority granted under division (A) or (B) of this section:

(1) A sheriff or deputy sheriff may arrest and detain, until a warrant can be obtained, any person found violating section 4503.11, 4503.21, or 4549.01, sections 4549.08 to 4549.12, section 4549.62, or Chapter 4511. or 4513. of the Revised Code on the portion of any street or highway that is located immediately adjacent to the boundaries of the county in which the sheriff or deputy sheriff is elected or appointed.

(2) A member of the police force of a township police district created under section 505.48 of the Revised Code, a member of the police force of a joint township police district created under section 505.481 of the Revised Code, or a township constable appointed in accordance with section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training commission under section 109.75 of the Revised Code, may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the township police district or joint township police district, in the case of a member of a township police district or joint township police district police force, or the unincorporated territory of the township, in the case of a township constable. However, if the population of the township that created the township police district served by the member's police force, or the townships that created the joint township police district served by the member's police force, or the township that is served by the township constable, is sixty thousand or less, the member of the township police district or joint police district police force or the

township constable may not make an arrest under division (E)(2) of this section on a state highway that is included as part of the interstate system.

(3) A police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed.

(4) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the lands and waters that constitute the territorial jurisdiction of the peace officer or state fire marshal law enforcement officer.

(F)(1) A department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person found committing on the premises of any institution under the jurisdiction of

the particular department a misdemeanor under a law of the state.

A department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code and who is found committing on the premises of any institution under the jurisdiction of the particular department a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution.

(2)(a) If a department of mental health special police officer or a department of mental retardation and developmental disabilities special police officer finds any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code committing a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution, or if there is reasonable ground to believe that a violation of section 2921.34 of the Revised Code has been committed that involves an escape from the premises of an institution under the jurisdiction of the department of mental health or the department of mental retardation and developmental disabilities and if a department of mental health special police officer or a department of mental

retardation and developmental disabilities special police officer has reasonable cause to believe that a particular person who has been hospitalized, institutionalized, or confined in the institution pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain that person for that violation of section 2921.34 of the Revised Code, until a warrant can be obtained, if both of the following apply:

(i) The pursuit takes place without unreasonable delay after the offense is committed;

(ii) The pursuit is initiated within the premises of the institution from which the violation of section 2921.34 of the Revised Code occurred.

(b) For purposes of division (F)(2)(a) of this section, the execution of a written statement by the administrator of the institution in which a person had been hospitalized, institutionalized, or confined pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the premises of the institution in violation of section 2921.34 of the Revised Code constitutes reasonable ground to believe that the violation was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation.

(G) As used in this section:

(1) A "department of mental health special police officer" means a special police officer of the department of mental health designated under section 5119.14 of the Revised Code who is certified by the Ohio peace officer training commission under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(2) A "department of mental retardation and developmental disabilities special police officer" means a special police officer of the department of mental retardation and developmental disabilities designated under section 5123.13 of the Revised Code who is certified by the Ohio peace officer training council under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(3) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(4) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(5) "Street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(6) "Interstate system" has the same meaning as in section 5516.01 of the Revised Code.

(7) "Peace officer of the department of natural resources" means an employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest officer designated pursuant to section 1503.29 of the Revised

Code, a preserve officer designated pursuant to section 1517.10 of the Revised Code, a wildlife officer designated pursuant to section 1531.13 of the Revised Code, a park officer designated pursuant to section 1541.10 of the Revised Code, or a state watercraft officer designated pursuant to section 1547.521 of the Revised Code.

(8) "Portion of any street or highway" means all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder.

CREDIT(S)

(2008 H 562, eff. 9-23-08; 2007 H 119, eff. 9-29-07; 2006 H 241, eff. 7-1-07; 2005 H 68, eff. 6-29-05; 2002 H 675, § 1.04, eff. 1-1-04; 2002 H 675, § 1.01, eff. 3-14-03; 2002 II 545, eff. 3-19-03; 2002 S 123, eff. 1-1-04; 2000 S 317, eff. 3-22-01; 2000 S 137, eff. 5-17-00; 1998 S 187, eff. 3-18-99; 1997 S 1, eff. 10-21-97; 1996 S 285, eff. 7-1-97; 1996 H 670, eff. 12-2-96; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1994 H 335, eff. 12-9-94; 1994 S 82, eff. 5-4-94; 1993 H 42, eff. 2-9-94; 1992 H 536; 1991 H 77; 1990 H 669, H 88; 1988 H 708, § 1)

Chapter 4549. Motor Vehicle Crimes
Stopping Motor Vehicle

4549.02 Stopping after accident; exchange of identity and vehicle registration

(A) In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.

In the event the injured person is unable to comprehend and record the information required to be given by this section, the other driver involved in the accident or collision forthwith shall notify the nearest police authority concerning the location of the accident or collision, and the driver's name, address, and the registered number of the motor vehicle the driver was operating, and then remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance.

If the accident or collision is with an unoccupied or unattended motor vehicle, the operator who collides with the motor vehicle shall securely attach the information required to be given in this section, in writing, to a conspicuous place in or on the unoccupied or unattended motor vehicle.

(B) Whoever violates division (A) of this section is guilty of failure to stop after an accident, a misdemeanor of the first degree. If the violation results in serious physical harm to a person, failure to stop after an accident is a felony of the fifth degree. If the violation results in the death of a person, failure to stop after an accident is a felony of the third degree. The court, in addition to any other penalties provided by law, shall impose upon the offender a class five suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(5) of section 4510.02 of the Revised Code. No judge shall suspend the first six months of suspension of an offender's license, permit, or privilege required by this division.

CREDIT(S)

(2003 H 50, § 4, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 130 v H 180, eff. 8-19-63; 1953 H 1; GC 12606)

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(2)

No. 09-52

Supreme Court, U.S.
FILED
AUG 12 2009
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In The
Supreme Court of the United States

SHAWN MICHAEL SKROPITS,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Ohio

BRIEF IN OPPOSITION

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CONSTITUTION

U.S. Const. Amend. IV ..... *passim*

STATEMENT OF THE CASE

In 2006, the Stark County Grand Jury returned an indictment charging Adam David Jones and Shawn Michael Skropits each with one count of carrying concealed weapons[1] and unlawful possession of a dangerous ordnance.[2] The indictment charged both Jones and Skropits as either the principal offender or as accomplices who aided and abetted each other. The men were charged with having four handguns and a sawed-off shotgun in their Ford Ranger, along with ammunition for the guns, when they were stopped after a traffic accident. Jones was the driver of the vehicle and Skropits was his passenger. Both men pleaded not guilty to these charges, and the case proceeded in the Stark County Court of Common Pleas.

Before trial, Skropits and Jones filed separate motions to suppress the evidence against them, arguing that the officer stopped them outside of his jurisdiction, and thus the stop was illegal. At the conclusion of the evidentiary portion of the hearing, the trial court determined what the parties agreed to with regard to the facts in this case. The parties agreed that it was dark at the time of the stop, that the police officer who made the stop was on his way back into his jurisdiction at the time he saw the vehicle Jones and Skropits were in, and that their

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[1] R.C. 2923.12(A)(2), a felony of the fourth degree.

[2] R.C. 2923.17(A), a felony of the fifth degree.

vehicle had damage to the grill and was operating without its headlights on.[3] The trial court asked defense counsel whether the officer had the legal right to stop such a vehicle under these conditions.

> THE COURT: . . . Under your view of this case, if he's outside of his jurisdiction, he's going back towards his jurisdiction, he sees the vehicle after dark, when, when the vehicle should have headlights on, doesn't have headlights on, it has a smashed grill, he can't stop it, he just has to let it go?
>
> MR. REISCH [JONES' ATTORNEY]: No, he should stop it, but then this Court should suppress it because he shouldn't be outside his jurisdiction. Yes.
>
> . . .
>
> THE COURT: Mr. Urban, at this point in time would you say this case stands for the proposition that the officer should let the vehicle go?
>
> I'm trying to –

---

[3] T.(S) 58-61. The record on appeal for this case consists of two volumes of transcripts – one for the suppression hearing, and one for the sentencing hearing. Skropits did not include a transcript of the no contest plea hearing. In the appeal of his co-defendant, Adam David Jones, only the transcript of the no contest plea hearing was transmitted as part of the record in his appeal. References to the transcript of the suppression hearing in this brief will be "T.(S)."

> MR. URBAN [SKROPITS' ATTORNEY]: I don't, I don't think it should stand for that proposition and I agree with what Mr. Reisch had indicated.
>
> T.(S) 62.

The trial court attempted to clarify this apparently contradictory position taken by both Jones and Skropits, i.e., that the officer had the legal authority to stop their vehicle, but also did not have this authority since he was outside of his jurisdiction at the time he saw their vehicle and stopped it.

> THE COURT: So you all are saying since he went further in doing something about this investigation than he should have, then if he sees something on his way back that he could otherwise stop someone for, he can't stop them?
>
> MR. REISCH [for JONES]: No, I think, as I said before, he should be able to stop the vehicle for, certainly for public safety, but then it's up to the Court to review whether that evidence should be suppressed, because he, there was no crime that took him outside.
>
> . . . Right. He should, taken as a snapshot in that moment of time, yes, he should have stopped the vehicle.
>
> T.(S) 64-65.[4]

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[4] Counsel for Skropits seemed to diverge from this position, arguing that the officer did not have authority to be outside of

(Continued on following page)

The trial court further questioned counsel, setting forth the facts that seemed to be undisputed at the hearing, focusing on the issue of whether the officer had authority to go outside of his jurisdiction as part of his investigation into a hit-skip accident within his jurisdiction.

> THE COURT: . . . But what we have here, for the sake of this argument, discussion, is that we have a police officer who was told about an incident that occurred and some type of incident between two vehicles that occurred within his jurisdiction, he went there, . . . , he cleaned the place up. He took the remedial action that he was supposed to take, kicked things off the road, get them off the side, looked around, didn't see anything.
>
> Went back to the city hall, was getting ready to go into the city hall to perform his other duties, which he enumerated for us, doesn't even get out, fully into his car – out of his car into the city hall, was radioed, told to go outside his jurisdiction because one of the vehicles may have been seen.
>
> So he goes out there, nothing there, and then someone comes along, says – well, gives him some information the vehicle he wants may

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his jurisdiction, and thus did not have the legal authority to make the stop. Counsel specifically made the analogy to the plain view situation, and whether an officer had a legal right to be where he was when he observed contraband or evidence in plain view. T.(S) 65.

be somewhere else, so he goes down there, to see if the vehicle is there. He goes away from his jurisdiction, doesn't, doesn't see anything.

He goes back to his jurisdiction, and sees a vehicle, a smashed-in grill, however you want to describe it, not having any headlights, and are we supposed to draw from the radical profiling, the facts that gave rise to, to the *Terry* case,[5] ah, that this is the same thing?

. . .

Okay. So you're, you're telling me that if, if a police officer gets what is arguably a valid call to go into a different jurisdiction to investigate, so see if there is something in that jurisdiction that may impact upon what happened in his jurisdiction, that he has to turn back around, if he doesn't see it, he has to turn back around and, ah, if he sees something then, it's okay?

But if he says, Hey, I'm just going to drive around the block, just going to go down to wherever, ah, other businesses are, where this place, where this car may have gone and stopped, whatever, that he can't do that, he has to just stop and go back? And if, if he –

. . .

---

[5] *Terry v. Ohio*, 392 U.S. 1 (1968).

> If he stops and goes back and then if he sees the vehicle, then he can stop it?
>
> But if he goes out and, as Mr. Burnworth and as mister, as the sergeant said, he does a sweep and then is going back to this jurisdiction, he can't stop this car?
>
> T.(S) 66-69 (footnote added).

Counsel for Skropits argued that the officer did not have reasonable articulable facts that justified continuing the investigation outside of the East Canton jurisdiction, characterizing the officers search for one of the vehicles involved in the hit-skip accident as "a wild goose chase."[6]

The trial court rejected this characterization of the officer's investigation and overruled the suppression motions. In so doing, the court found that the officer reasonably pursued his investigation into the hit-skip accident into nearby areas that were just outside of his jurisdiction, and then reasonably stopped the suspected vehicle when he was on his way back to his jurisdiction.

> What I'm looking at is that was a logical thing for a police officer to do, as part of his investigation. He had an investigation, he had an incident that occurred within his jurisdiction. He went there, ah, obviously because of the road debris, he, there had been something which had occurred.

---

[6] T.(S) 69-70.

> Going back to city hall, was told, was dispatched to go outside of his jurisdiction in continuation of what had happened – his investigation of what had happened in his jurisdiction.
>
> Goes out there, doesn't see anything, gets some additional information, takes a final step in the, in his investigation, does the sweep, and then on his way back to the, back to his jurisdiction, he sees a vehicle, ah, which matches what had happened, ah, in his jurisdiction. Has a smashed in grill, it was driving after dark without headlights and he stopped it.
>
> Just giving you my findings of fact and my conclusion of law, is that on the basis of that, ah, stopping that vehicle was not a violation of the constitutional rights of either Mr. Skropits or Mr. Jones. And I'm denying the motion to dismiss.
>
> T.(S) 71-72.

After the suppression motions were overruled, Skropits opted to plead no contest to the charges in the indictment. Based upon the evidence presented at the suppression hearing, the court found both Jones and Skropits guilty of the charged offenses, and ordered a probation investigation report. Upon the completion of this report, the court imposed a community control sanction for a period of two years.

Jones and Skropits both appealed their convictions and sentences to the Court of Appeals for

Stark County (Fifth Appellate District), challenging solely the trial court's suppression ruling. The court of appeals sustained their lone assignments of error and reversed the trial court, concluding that it had erred in not sustaining their suppression motions. In so ruling, the appellate court held that the extra-territorial stop by the officer in this case violated the reasonableness requirement of the Fourth Amendment, and hence invalidated the stop and subsequent search of the motor vehicle.[7]

Judge Julie A. Edwards dissented in both cases. Judge Edwards reasoned that this Court's *Weideman* decision[8] was controlling in these cases. Pursuant to this case, Judge Edwards would have held that the stop in this case was not unreasonable since the police officer observed a traffic violation being committed by the vehicle driven by Jones and Skropits, i.e., driving at night without its headlights on, and thus the trial court did not err in overruling the suppression motions.

The State of Ohio appealed these two cases to the Ohio Supreme Court, which accepted the cases for

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[7] *State v. Jones*, Stark App. No. 2007-CA-00139, 2007-Ohio-5818, 2007 WL 3171206; *State v. Skropits*, Stark App. No. 2007-CA-00098, 2007-Ohio-5817, 2007 WL 3171209.

[8] *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997 (2002).

review[9] and ordered them consolidated.[10] The supreme court reversed the decision of the court of appeals, and held that the trial court did not err in overruling the suppression motions. The supreme court, in relying on its precedents as well as this Court's *Virginia v. Moore* decision, held that a police officer who personally observes a traffic violation outside of his territorial jurisdiction has probable cause to make a traffic stop, and such a stop is thus not unreasonable under the Fourth Amendment.[11] It is from this decision that Skropits now files the instant petition for writ of certiorari from this Court.

The facts of this case are not complicated. On September 27, 2006, Officer Mitchell Hershberger of the East Canton Police Department was dispatched to an accident scene to investigate the collision of two motor vehicles. When he arrived at the location of the accident – 113 East Nassau Street in East Canton – neither vehicle was still at the scene. Hershberger talked with a witness who worked at the nearby gas station, and was told that a small red Ford Ranger had struck the rear end of a full-size van. The driver of the van got out and exchanged words with the

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[9] *State v. Jones*, 117 Ohio St.3d 1438, 883 N.E.2d 456 (2008) (appeal allowed); and *State v. Skropits*, 117 Ohio St.3d 1423, 882 N.E.2d 444 (2008) (appeal allowed).

[10] *State v. Skropits*, 117 Ohio St.3d 1450, 883 N.E.2d 1075 (2008) (cases consolidated).

[11] *State v. Jones*, 121 Ohio St.3d 103, 902 N.E.2d 464 (2009), syllabus.

driver of the Ford Ranger. The driver of the van then got back into his vehicle, made a U-turn, and left the scene. The Ford Ranger also left the scene, proceeding westbound on Nassau Street.[12]

Hershberger next examined the accident site, and noticed debris from the Ford Ranger on the street. He specifically found debris of the front turn signal light from the Ranger. The officer cleared the street of this debris, which took about five minutes, and then proceeded to the town's village hall (as he was also the bailiff for mayor's court that night). The village hall was about 30 yards from the accident scene. As he was exiting his cruiser, Hershberger received a dispatch call that a red Ford Ranger with a smashed front and headlights out was hiding at the Old Coyote restaurant, which was located on the Osnaburg Township – Canton Township boundary line. The restaurant was about a half mile from East Canton. Hershberger knew that there was a trailer park there.[13]

Hershberger investigated the old restaurant area and the trailer park,[14] but did not find the red Ford Ranger. Thinking that the vehicle might be going to

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[12] T.(S) 8-10, 21, 42-43.

[13] T.(S) 11-13, 22-25, 26, 38, 42.

[14] The Coyote was not in the East Canton jurisdiction, but was just across the line in Canton Township. The trailer court was east of the old restaurant, in Osnaburg Township, between the city limits of East Canton and Canton Township. T.(S) 26-27.

the City of Canton, Hershberger opted to continue west of Nassau Street (which turned into Lincoln Street) to Trump Road, which was about a half mile from his location. At the intersection of Trump Road and State Route 172, there is a McDonald's restaurant and a Speedway, as well as a drive-through, a motel, and a car wash. As Hershberger pulled into the parking lot of this area, a pickup truck approached him. Hershberger estimated that it took him about two minutes to get here from the village hall. The men in this pickup truck told the officer that a motor vehicle with no headlights on almost hit them, and that this vehicle was coming westbound. Hershberger immediately proceeded eastbound on State Route 172, heading back to East Canton, when he saw the red Ford Ranger without its headlights on and its front end smashed. The officer turned around and followed the Ranger, eventually turning on his lights to make a traffic stop.[15]

The traffic stop occurred about 1¼ miles from the East Canton accident site. Hershberger noted that the red Ford Ranger fit the description of the vehicle that rear-ended the van in East Canton. Hershberger pulled the vehicle over for driving without its headlights on, for leaving the scene of an accident, and for littering the roadway with injurious material. Given the information that the gas station clerk who had witnessed the accident had given him,

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[15] T.(S) 13-16, 25.

Hershberger felt that the drivers did not take the time to exchange insurance information but had simply left the scene after exchanging words.[16] Hershberger felt that while he was not in hot pursuit of a driver who had fled this accident scene, he was nonetheless in fresh pursuit. And he pulled over the Ranger for driving without its headlights on, he asked the dispatcher to contact the Ohio Highway Patrol to come to the scene, but was told that they were not available.[17]

ARGUMENT

Skropits argues the Ohio Supreme Court's ruling that the extraterritorial traffic stop of a motor vehicle based on probable cause – a traffic violation committed in the presence of the police officer – did not violate the Fourth Amendment and was an erroneous application of this Court's Fourth Amendment jurisprudence. The Ohio Supreme Court reached its conclusion based upon one of its earlier precedents – *State v. Weideman*, 94 Ohio St.3d 501, 764 N.E.2d 997 (2002) – as well as this Court's 2008 decision of *Virginia v. Moore*, ___ U.S. ___, 128 S.Ct. 1598, 170 L.Ed.2d 559 (2008). Skropits curiously does not cite or

[16] This clerk had mimicked the driver of the van in telling Hershberger about the accident, and the driver appeared to be animated when talking with the driver of the Ford Ranger. T.(S) 41.

[17] T.(S) 19, 20, 29, 40-41, 42-45.

otherwise refer to either of these two decisions in arguing that the Ohio Supreme Court's ruling in this case violated the Fourth Amendment's prescriptions. As a result, Skropits' argument and petition are seriously flawed and not only overlooks or ignores the crux of the Ohio Supreme Court's decision, but also overlooks or ignores this Court's recent *Moore* decision and its applicability to the legal issue in this case. As a result, this Court should deny the petition for writ of certiorari.

In the case below, the Ohio Supreme Court held that a law enforcement officer who personally observes a traffic violation, even if outside of his statutorily prescribed territorial jurisdiction, has probable cause to make the traffic stop in accordance with the principles of the Fourth Amendment. In so ruling, the supreme court relied upon its earlier precedent in *Weideman,* but also relied upon this Court's recent decision in *Virginia v. Moore.* The state supreme court specifically stated in its opinion, "Our decision in *Weideman* and the United States Supreme Court's recent decision in *Virginia v. Moore* [], are dispositive of this matter." *Jones,* 121 Ohio St.3d 103, 902 N.E.2d 464, at ¶ 11 (2009). Despite this clear statement by the Ohio Supreme Court in its decision, Skropits nonetheless ignores these two decisions and argues that the court erred in so ruling. Skropits does not even ask this Court to revisit its *Moore* decision and construct some argument challenging its validity, rationale, or logic. Absent such a challenge, this Court is left with a rather simple review of the

state supreme court's decision to determine whether it correctly followed *Moore*. Such a review would only reaffirm the principles set forth in *Moore* and not result in either a change in current Fourth Amendment jurisprudence or a reversal of the decision below.

In *Moore,* this Court held that a stop and arrest of a motorist in violation of state law did not trigger Fourth Amendment protections as long as that stop and arrest were based upon probable cause. This Court explained that "when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." *Moore,* ___ U.S. at ___, 128 S.Ct. at 1608, 170 L.Ed.2d 559. While states are free to legislate higher standards for searches and seizures, as well as provide for the exclusionary-rule remedy for such violations, those laws do not alter the requirements of the Fourth Amendment. *Moore,* ___ U.S. at ___, 128 S.Ct. at 1606, 170 L.Ed.2d 559. Thus, since the stop and arrest in *Moore* was supported by probable cause, it did not run afoul of the Fourth Amendment even though it violated state law. Skropits does not dispute or challenge this holding.

The Ohio Supreme Court simply followed this holding in *Moore* in ruling that an extraterritorial stop and arrest of a motorist that violated state law did not run afoul of the Fourth Amendment since the stop and arrest were supported by probable cause. In the instant case, Officer Hershberger had probable

cause to stop the red Ford Ranger. While searching for one of the vehicles in a hit-skip accident – and specifically for the red Ford Ranger that had apparently rear-ended into a van Officer Hershberger was approached by the occupants of a pickup truck who alerted him to a vehicle that had just almost run into them and was driving without its headlights on. The vehicle was coming westbound towards them, so Hershberger proceeded on State Route 172 towards East Canton and the reported vehicle. Shortly afterwards, Hershberger saw the vehicle – a red Ford Ranger without its headlights on and with a smashed front – pass him. He immediately turned around and made the traffic stop for driving in the dark without its headlights on. Hershberger personally observed this traffic violation and therefore had probable cause to make the traffic stop.[18]

In addition, Hershberger had probable cause to believe that this red Ford Ranger was the one involved in the earlier hit-skip accident in East Canton. Hershberger immediately responded to the call that an accident had occurred, but did not find the vehicles there. After talking to a witness to the accident, the officer spent about five minutes cleaning

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[18] See R.C. 4513.03 (requiring lights on motor vehicles between sunset and sunrise and whenever there is insufficient light to see 1,000 feet ahead); R.C. 4513.04 (all motor vehicles must be equipped with at least two operable headlights); R.C. 4513.14 (two headlights must be displayed during the times prescribed in R.C. 4513.03); R.C. 4513.15 (headlight illumination required).

the roadway of the debris left from the accident – debris from the front headlights of the red Ford Ranger identified by the witness. Hershberger then proceeded to the village hall, located about 30 yards from the accident site, when he received another dispatch call relative to the Ranger. He immediately proceeded to the Old Coyote restaurant, located about a half mile from East Canton, where he looked for the vehicle there and at the nearby trailer park. Not finding the Ranger, Hershberger opted to continue westbound for another half mile to the intersection of State Route 172 and Trump Road. While in a parking lot at this intersection, Hershberger was confronted by the occupants in the pickup truck about a vehicle driving without its headlights, despite it being dark outside, and had almost collided with the pickup truck. Hershberger immediately left the parking lot, going east towards East Canton, and passed the red Ford Ranger without its headlights on and its front smashed in. Given the closeness in time and location, Hershberger had probable cause to believe that this red Ford Ranger was the one that had shortly before rear-ended a van in East Canton and left the scene westbound.

The Ohio Supreme Court's *Weideman* decision was also in accordance with Moore's Fourth Amendment prescription. In that decision, the state supreme court held that extraterritorial traffic stops, if supported by probable cause based upon a police officer observing a traffic violation, are not unreasonable per se under the Fourth Amendment.

> Where a law enforcement officer, acting outside the officer's statutory territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, the seizure of the motorist by the officer is not unreasonable per se under the Fourth Amendment. Therefore, the officer's statutory violation does not require suppression of all evidence flowing from the stop.

Weideman, supra, at syllabus.

Both *Weideman* and the decision below are in accordance with the clear, bright-line principles this Court set forth and reaffirmed just last year. Skropits does not challenge this Court's *Moore* decision – either its holding or its rationale. He is in essence asking this Court to reverse the Ohio Supreme Court below without confronting head-on its *Moore* decision. Such a task is seriously flawed since the supreme court below simply applied *Moore*'s uncomplicated holding to the state statute in question to the uncontested facts of this case.

CONCLUSION

For this reason, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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